84-1863

No. ———

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

DISTRICT 17, DISTRICT 29, LOCAL UNION 7113, and LOCAL UNION 6023, UNITED MINE WORKERS OF AMERICA; and JOHN RAMEY and JOSEPH MCCARDLE, on Behalf of Themselves and Others Similarly Situated,

Cross-Petitioners,

v.

ALLIED CORPORATION

and

THE UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN AND TRUST,

Respondents.

CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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QUESTION PRESENTED FOR REVIEW

Whether, in the event the Petition in *Allied Corporation v. District 17, UMWA, et al.*, No. 84-1684, is granted and the *en banc* decision of the Fourth Circuit is reversed, the Court should reinstate the decision of the Fourth Circuit panel holding the UMWA 1974 Benefit Plan and Trust responsible for health and other non-pension benefits of Allied's 1974 pensioners in order to avoid a plainly unjust result.

PARTIES

The parties to the proceeding in the court below were: Allied Corporation ("Allied"), Armco, Inc. ("Armco"), Shannon Pocahontas Coal Company ("Shannon Pocahontas"), District 17, District 29, Local Union 7113, and Local Union 6023 of the United Mine Workers of America ("UMWA"), John Ramey and Joseph McCardle (on behalf of themselves and others similarly situated), and the United Mine Workers of America 1974 Benefit Plan and Trust ("1974 Benefit Trust"). This brief is filed on behalf of District 17 and District 29, UMWA, Local Union 7113 and Local Union 6023, UMWA, and John Ramey and Joseph McCardle, on behalf of themselves and others similarly situated. The UMWA Districts and Local Unions are subordinate bodies of the International Union, United Mine Workers of America, all of which are unincorporated associations.

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Cross-Petitioners, District 17, District 29, Local Union 7113, and Local Union 6023, United Mine Workers of America and John Ramey and Joseph McCardle, on behalf of themselves and others similarly situated, pray that in the event a writ of certiorari is granted in the matter of *Allied Corp. v. District 17, UMWA, et al.*, Supreme Court Docket No. 84-1684, a writ of certiorari also issue to review the *en banc* decision of the United States Court of Appeals for the Fourth Circuit in this

case insofar as that decision holds that the 1974 Benefit Trust is not responsible for the health and other non-pension benefits of the 1974 pensioners of the Allied Corporation, Petitioner in No. 84-1684.

OPINIONS BELOW

The opinions below are identified in the Petition of Allied Corporation in No. 84-1684 and are included in Appendices A, B, C, D, and E thereto.

JURISDICTION

The final judgment of the court of appeals, reproduced as Appendix E to the Petition in No. 84-1684, was entered on February 11, 1985. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and Rule 19.5 of the Rules of this Court.

STATUTE INVOLVED

Section 301(a) of the Labor-Management Relations Act provides:

> "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." 29 U.S.C. 185(a).

STATEMENT

The pertinent facts are stated in the Petition of Allied Corporation, No. 84-1684, except insofar as the Statement therein does not describe the cross-petitioners' claims against the 1974 Benefit Trust.

The Petition in 84-1684 was received
by Counsel for Cross-Petitioners
on April 29, 1985.

Throughout these proceedings, the overriding objective of the cross-petitioners—plaintiffs in the district court—has been to assure the continuation of the health and other non-pension benefits of Allied's 1974 pensioners. The unions and union member plaintiffs asserted primarily that Allied had violated its obligation under Article I of the National Bituminous Coal Wage Agreement of 1978 when it failed to pass on its obligations to provide these benefits to the purchasers of its coal mines—Armco and Shannon Pocahontas—incident to sale of its mines to them in 1980. The district court and the *en banc* Fourth Circuit Court of Appeals agreed that Allied had breached Article I. The district court enjoined Allied to continue to provide the benefits. The Fourth Circuit *en banc* decision sustained the district court's injunction because, in the majority's view, the benefits of Allied's 1974 pensioners would—but for Allied's breach—foreseeably have been carried forward under ensuing collective bargaining agreements. Allied has lodged a Petition for Writ of Certiorari seeking review of that determination, No. 84-1684.

The union and union member plaintiffs contended alternatively in the district court and the court of appeals that responsibility for the continued benefits of Allied's 1974 pensioners should be assigned to the 1974 Benefit Trust. The district court, in enjoining Allied to continue to provide the benefits, rejected the claim against the 1974 Benefit Trust. Allied appealed from the judgment in the district court and the unions and union member plaintiffs pursued a cross-appeal.

The initial panel opinion of the Fourth Circuit, *Allied Corp. v. District 17, UMWA*, 735 F.2d 121 (4th Cir. 1984) (Petition in No. 84-1684, App. B), vacated the district court's injunction against Allied but sustained the union and union members' cross-appeal. The panel assigned responsibility for the 1974 pensioners' continued

benefits to the 1974 Benefit Trust. (Petition in No. 84-1684, App. B, 40a-47a.) On Petition for Rehearing, the Fourth Circuit *en banc* sustained the district court's injunction against Allied and accordingly held that the 1974 Benefit Trust was not responsible for the benefits of Allied's 1974 pensioners.

Cross-petitioners believe that the judgment of the Fourth Circuit based on its *en banc* decision sustaining the injunction against Allied is correct and are satisfied therewith. Further, as set forth in their Brief in Opposition to Petition for Certiorari in No. 84-1684, cross-petitioners submit that the Petition therein states no ground warranting this Court's review.

Cross-petitioners seek modification of the Fourth Circuit's *en banc* decision only conditionally, in the unlikely event that this Court were to reverse the appellate court's decision sustaining the injunction against Allied. In that event, cross-petitioners would contend that responsibility for the continued benefits of Allied's 1974 pensioners should be assigned to the 1974 Benefit Trust, the view taken by the original Fourth Circuit panel and shared by four members of the court sitting *en banc*.

REASONS FOR GRANTING THE WRIT IN THE EVENT THE WRIT IN NO. 84-1684 IS GRANTED

In the event the injunction against Allied were reversed, this Court would most likely remand this matter to the Fourth Circuit for further proceedings not inconsistent with its opinion. Unless this cross-petition is granted and the Fourth Circuit's judgment is vacated insofar as it relieves the 1974 Benefit Trust of responsibility, the Trust would be likely to contend on remand that it was protected by the court of appeals' February 11, 1985, *en banc* judgment insofar as it appears to exonerate them of responsibility.

Such a result was plainly not intended by any member of the Fourth Circuit. Five members of that court adhered to the view stated in the majority opinion of Judge Sprouse (Petition in No. 84-1684, App. A, 4a, *et seq.*) that the district court properly enjoined Allied to continue providing the benefits as a remedy for its contract breach in failing to pass on responsibility for the benefits to its purchasers. Four members of the court joined in the views stated by Judge Chapman in dissenting from the *en banc* majority and incorporating his original panel opinion. (Petition in No. 84-1684, App. A, 20a.)

The Allied Corporation, Petitioner in No. 84-1684, agrees that responsibility for the benefits in question should be assigned to the 1974 Benefit Trust in the event it is relieved of responsibility. Indeed, the principal thrust of Allied's contentions to the Fourth Circuit was that the party properly responsible for the benefits in question was the 1974 Benefit Trust.

Cross-petitioners herein believe the writ in No. 84-1684 should plainly be denied. In the event the writ were granted, this Cross-Petition should also be granted in order to avoid an unjust result not contemplated by any of the parties or by any of the judges below.

CONCLUSION

In the event the Petition for a Writ of Certiorari in No. 84-1684 is granted, this Cross-Petition for Writ of Certiorari should be granted as well.

Respectfully submitted,

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Cross-Petitioners,

v.

ALLIED CORPORATION,

and

THE UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN AND TRUST,
Respondents.

On Cross-Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

BRIEF IN OPPOSITION OF RESPONDENT ALLIED CORPORATION

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Respondents.

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BRIEF IN OPPOSITION OF RESPONDENT ALLIED CORPORATION

The Cross-Petition asks the Court to entertain an argument that the decision of the Fourth Circuit *panel* should be reinstated insofar as it holds that the United Mine Workers of America 1974 Benefit Plan and Trust ("1974 Benefit Trust") is liable for the benefits at issue. In support of this request, Cross-Petitioners argue that the court below upheld the district court's decision with respect to the 1974 Benefit Trust only because it also upheld the district court's decision with respect to Allied

Corporation ("Allied"). This Cross-Petition obviously presents no circuit court conflict, no conflict with any prior decision of this Court, and no important unsettled question of federal labor law. It therefore presents no basis for this Court to grant a Petition, or Cross-Petition, for a Writ of Certiorari.

Cross-Petitioners further attempt to support their Cross-Petition by stating that Allied "agrees that responsibility for the benefits in question should be assigned to the 1974 Benefit Trust in the event that it is relieved of responsibility." Cross-Petition at 5. This does not correctly state Allied's position. Allied consistently has maintained that the 1974 Benefit Trust is currently obligated to provide health and other non-pension benefits for its 1974 pensioners. However, Allied's contention in this regard is based upon its reading of the documents governing the administration of the Trust. Those documents require the 1974 Benefit Trust to provide health and other non-pension benefits for 1974 pensioners under specified circumstances that Allied believes have been met.

CONCLUSION

For the reasons stated, the Cross-Petition should be denied.

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v.

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THE UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN AND TRUST,
Respondents.

OPPOSITION OF UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN AND TRUST TO CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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BEST AVAILABLE COPY

QUESTION PRESENTED

Does the Trustees' application of their regulation, adopted pursuant to authority granted by the 1974 Benefit Trust, raise an important question warranting this Court's review?

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COUNTER-STATEMENT

Cross-Petitioners are two districts and two locals of the United Mine Workers of America ("UMWA" or "Union"), and two individuals suing on behalf of themselves and a class of approximately 190 retired employees who worked at two coal mines formerly owned by Allied Corporation ("Allied").

On September 30, 1982, cross-petitioners filed a complaint against Allied, Armco, Inc. ("Armco"), Shannon Pocahontas Coal Company, Inc. ("Shannon Pocahontas"), and the UMWA

1974 Benefit Trust ("1974 Benefit Trust" or "Trust") in the United States District Court for the Southern District of West Virginia. In their complaint, cross-petitioners requested the Court to issue a preliminary and permanent injunction against the corporations and the 1974 Benefit Trust, requiring them to provide health coverage to Allied's retirees (Petition in No. 84-1684, Appendix C ["Appendix C"], pp. 53a-56a).

The case was tried to the Court on December 16, 1982 (Appendix C at 65a). After reviewing the evidence submitted, the District Court issued a judgment order and memorandum opinion on January 12, 1983 (Appendix C at 53a-68a; Petition in No. 84-1684, Appendix D ["Appendix D"], pp. 69a-70a). In that order and opinion, the Court found that the 1974 Benefit Trust is not responsible for providing health benefit coverage to Allied's retirees, and ordered Allied to provide that coverage until Armco and Shannon Pocahontas agree to do so (Appendix C at 65a-68a; Appendix D at 69a-70a).

All parties, except the 1974 Benefit Trust, appealed. A divided panel of the Fourth Circuit reversed. The majority decided that Allied, Armco, and Shannon Pocahontas are not responsible for providing health coverage to Allied's retirees, and that responsibility therefor rests solely with the 1974 Benefit Trust (Petition in No. 84-1684, Appendix B ["Appendix B"], pp. 24a-47a).

The 1974 Benefit Trust petitioned for rehearing and suggested a rehearing *en banc*. The case was reheard *en banc* in October, 1984. In a 5-4 decision, the full Court reversed the decision of the panel, requiring the 1974 Benefit Trust to provide health coverage to Allied's retirees, and affirmed the decision of the District Court, requiring Allied to provide that coverage until Armco and Shannon Pocahontas agree to do so (Petition in No. 84-1684, Appendix A ["Appendix A"], pp. 4a-20a).

The decision of the Fourth Circuit was based on the following facts. In early 1980, Allied transferred a substantial part of the assets of its Harewood mine to Armco. Armco began operating the Harewood mine soon thereafter, without any substantial change in Allied's operations. The majority of the employees hired by Armco were previously employed at that mine by Allied. (Appendix A at 6a, 9a.)

During the same period, Allied also transferred a substantial part of the assets of its Shannon Branch mine to Shannon

Pocahontas. The majority of the employees hired by Shannon Pocahontas were previously employed at the mine by Allied. Shannon Pocahontas began operating the mine soon thereafter without any substantial change in Allied's operations. (Appendix A at 6a, 9a.)

Under the agreements by which it transferred the Harewood and Shannon Branch mines, Allied did not require Armco or Shannon Pocahontas to provide health coverage to its retirees who last worked at these mines (Appendix A at 6a-7a). Rather, Allied continued to provide health coverage to these retirees for the remainder of the National Bituminous Coal Wage Agreement ("Wage Agreement") of 1978 and during the first sixteen months of the 1981 Wage Agreement. However, by letter dated August 11, 1982, Allied informed the retirees of its intent to terminate their coverage, effective September 1, 1982. (Appendix A at 7a; Appendix C at 63a-64a.)

Thereafter, the named individual cross-petitioners submitted a request for an advisory opinion to the Trustees of the UMWA 1950 Benefit Plan and Trust. They asked the Trustees whether the 1974 Benefit Trust is responsible for providing their health coverage under Article II.F. of the Trust. (Appendix A at 7a; Appendix C at 64a.)[1] Article II.F. provides that health benefits will be provided to UMWA 1974 Pension Plan pensioners who cease to receive such benefits because their last signatory employer, including any "successors or assigns" of that employer, is "no longer in business" (Appendix A at 8a). Pursuant to their authority under Article III of the 1974 Benefit Trust, the Trustees adopted a construction of the terms "no longer in business" and "successor" in Q&A H-16:

> [A] company signatory to the 1978 Wage Agreement will be considered a "successor" if:
>
> (a) the new company has signed the 1978 Wage Agreement; *and*
>
> (b) a majority of the employees presently working for the new employer formerly worked for the old employer; *and*

[1]Under Article XX of the 1978 Wage Agreement, the Trustees were authorized to resolve disputes concerning eligibility for health coverage.

(c) the location is the same geographical area and the work functions have been continued relatively unchanged; *and*

(d) operations are not suspended for longer than six months (not counting a strike period); *and*

(e) . . . there has been a transfer of a substantial portion of the assets of the old company (seller) to the new company (purchaser). . . .

* * *

A company is "no longer in business" when

* * *

2. the company has not received income from the production or sale of coal, or transportation of coal, or related activities, for at least six months. . . . [Appendix C at 58a-61a.]

On October 26, 1982, the Trustees issued an advisory opinion. In that opinion they concluded that:

> [u]nder . . . Q&A H-16, [Allied] is no longer in business, because it has not owned or operated any coal mines since March 1980.
>
> [Armco and Shannon Pocahontas], however, are successors to [Allied] . . . , within the meaning of Q&A H-16, for the following reasons: [Armco and Shannon Pocahontas] signed the NBCWA of 1978 for [the Harewood and Shannon Branch] Mines . . . , and have continued to operate those mines, with no significant suspension of operations following the transfer of ownership of the Mines. The Mines are in the same location as when they were operated by [Allied], and the work functions have continued relatively unchanged. Following the transfers of ownership, a majority of the Employees working for [Armco and Shannon Pocahontas] at [the Harewood and Shannon Branch] Mines . . . were previously employed at these Mines by [Allied]. Finally, as part of the transfer of ownership, [Allied] transferred most of the assets of the Mines to [Armco and Shannon Pocahontas]. Because [Armco and Shannon Pocahontas] are successors to [Allied] and are still in [the coal] business, [Allied's retirees] are not eligible for [health] coverage from the 1974 Benefit Trust. [Joint Appendix in *District 17 v. Allied Corp.*, No. 83-1117 (4th Cir.) ["Joint Appendix"], Vol. II, p. 789.]

REASONS FOR DENYING THE WRIT

THE TRUSTEES' APPLICATION OF THEIR REGULATION, ADOPTED PURSUANT TO THE AUTHORITY GRANTED BY THE 1974 BENEFIT TRUST, DOES NOT RAISE AN IMPORTANT QUESTION WARRANTING THIS COURT'S REVIEW.

Cross-petitioners assert that they "believe the writ in No. 84–1684 should plainly be denied." Cross-Petition at 5. In the event the writ is granted, however, they assert that their Cross-Petition should also be granted. In their cross-petition, they ask this Court to vacate the *en banc* decision and direct the 1974 Benefit Trust to provide health benefits to Allied's retirees. Cross-Petition at 5. In doing so, however, they are requesting this Court to review nothing more than the application by the Trustees of a duly authorized Trust regulation to the record in this case.

The regulation in question, Q & A H-16, adopted by the Trustees pursuant to their authority under Article III of the 1974 Benefit Trust, defines the terms "no longer in business" and "successor."[2] Under Q & A H-16, a company is "no longer in business" when it is no longer in the coal business. And a "successor" exists where the purchaser (1) signs the 1978 Wage Agreement, (2) draws a majority of the employees from the seller, (3) maintains essentially the same operation at the same geographical location, (4) has not suspended its operations for more than six months, and (5) acquires a substantial portion of the seller's assets (Appendix C at 58a-61a).

Applying Q & A H-16 to the record in this case, the Trustees found, and the Fourth Circuit confirmed, that Allied was "no longer in business" because the Company sold its coal operations to Armco and Shannon Pocahontas. The Trustees also found, and the Fourth Circuit confirmed, that Armco and

---

[2]Article III of the 1974 Benefit Trust provides that "the Trustees shall have full authority . . . with respect to administration of coverage and eligibility, methods of providing or arranging for provisions for benefits . . . and all other related matters" (Joint Appendix, Vol. I, p. 201), and that "[t]he Trustees are authorized to promulgate rules and regulations to implement the Plan. . ." (Trust's Exhibit 12 in *District 17 v. Allied Corp.*, No. 82-2455 (S.D.W.Va.), p.60).

Shannon Pocahontas are successors. They reached this conclusion because Allied transferred most of the assets of its mines to Armco and Shannon Pocahontas; Armco and Shannon Pocahontas signed the 1978 Wage Agreement; Armco and Shannon Pocahontas commenced mining operations shortly thereafter at the same location; there was no change in the operation of the mines; and the majority of the employees of Armco and Shannon Pocahontas were previously employed by Allied. Armco employed 159 former Allied workers in its 215-person work force, and Shannon Pocahontas employed 298 former Allied workers in its 401-person work force (Appendix A at 9a).

Because the record indicated that Armco and Shannon Pocahontas satisfied the successorship requirements in Q & A H-16, the Trustees concluded that the 1974 Benefit Trust was not responsible for providing health coverage to Allied's retirees under Article II.F. The Fourth Circuit, sitting *en banc*, agreed. *District 17 v. Allied Corp.*, No. 83-1212, slip op. at 7-10 (4th Cir. Feb. 11, 1985) (*en banc*) (Appendix A at 8a-10a). Based on well settled law in that Circuit, which is consistent with the law in other Circuits, this Court should decline to review that decision at this time.

The "[t]rustees of a trust fund enjoy wide discretion in determining eligibility for benefits under their trust." *District 17 v. Allied Corp.*, slip op. at 9 (Appendix A at 9a). In order to overturn their eligibility determinations, it is necessary to find that the trustees have acted arbitrarily and capriciously. *Id. See Seafarers Pension Plan v. Sturgis*, 630 F.2d 218, 221 (4th Cir. 1980); *Kolata v. United Mine Workers of America 1974 Pension Trust*, 533 F. Supp. 313, 318-19 (S.D.W.Va.), *aff'd*, 696 F.2d 990 (4th Cir. 1982). *Accord, Miniard v. Lewis*, 387 F.2d 864 (D.C. Cir. 1967), *cert. denied*, 393 U.S. 873 (1968); *Pompano v. Michael Schiavone & Sons, Inc.*, 680 F.2d 911 (2d Cir.), *cert. denied*, 459 U.S. 1039 (1982); *Paris v. Profit Sharing Plan for Employees of Howard B. Wolf, Inc.*, 637 F.2d 357 (5th Cir.), *cert. denied*, 454 U.S. 836 (1981); *Norman v. United Mine Workers of America Health and Retirement Funds*, 755 F.2d 509 (6th Cir. 1985); *Wardle v. Central States, Southeast & Southwest Areas Pension Fund*, 627 F.2d 820 (7th Cir. 1980), *cert. denied*, 449 U.S. 1112 (1981); *Tbrimino v. United Food & Commercial Workers International Union, Industry Pension Fund*, 712 F.2d 882 (8th Cir. 1983); *Rehmar v. Smith*, 555 F.2d

1362 (9th Cir. 1977); *Murn v. United Mine Workers of America*, 718 F.2d 359 (10th Cir. 1983).

Here, as the Fourth Circuit concluded, "the Trustees' denial of benefits was anything but arbitrary or capricious." *District 17 v. Allied Corp.*, slip op. at 10 (Appendix A at 10a). Indeed, their denial was based upon nothing more than the proper application of a regulation adopted by them to the record in this case. As such, it does not raise any important question warranting review by this Court. *NLRB v. Pittsburgh Steamship Co.*, 340 U.S. 498, 503 (1951); *General Talking Pictures Corp. v. Western Electric Corp.*, 304 U.S. 175, 178-179 (1938).

CONCLUSION

Upon the foregoing, it is respectfully submitted that the cross-petition for a writ of certiorari should be denied.

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